UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

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In re

AMENDMENTS TO PETITIONS, LISTS, SCHEDULES, AND STATEMENTS

GENERAL ORDER AND NOTICE

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TAKE NOTICE that on and after April 15, 1988, the Court will no longer enter orders approving or authorizing amendments to voluntary petitions, schedules, statements, or lists, nor will the Court address the adequacy, sufficiency, or effect of any such amendment, in the absence of a controversy properly raised.

The attention of all attorneys for voluntary debtors, and that of all pro se debtors, is directed to Rule 1009 of the Rules of Bankruptcy Procedure and to the requirement of a verified signature contained in Rule 1008. The Court will no longer monitor compliance with these Rules except to the extent that the administrative processes of the Court or of the Office of its Clerk are impeded. In all other instances, purported "Amendments" will merely be docketed and filed in the form submitted, and neither the Court nor the Clerk will express any opinion regarding their effect unless the Court is properly requested to rule thereon in the context of an actual dispute.

Notwithstanding the above, the Clerk may specify the minimum requirements of form for those amendments which are necessary to move the case through the administrative processes of the Court, and may for that purpose rely on amendments conforming to those requirements, even though said requirements might not be coextensive with those the Court might later enunciate as having been necessary in order to accomplish a legally-effective amendment as against other parties. (*)

No purported amendment of any type will be acknowledged, recognized or processed as such by the Office of the Clerk unless there is affixed to the front thereof a completed Amendment Cover Sheet, in a form prescribed by the Clerk. Said form shall require the signature of the attorney for the debtor, or the signature of the debtor if acting pro se, and shall require certification that notice of the amendment has been given as required by the Rules of Bankruptcy Procedure. The Clerk may include such other matters in the form as are desirable or necessary to facilitate recognition of the nature and content of the amendment for administrative purposes.

For purposes of this Order and Notice, the term "amendment" also includes the delayed initial filing of a schedule, statement, list or other document that discloses the existence of parties-in-interest who were not disclosed in the list of creditors that accompanied the petition. SO ORDERED.

Dated: 3/21/88

HON. BERYL E. MC GUIRE

HON. JOHN W. CREAHAN

*Thus, for example, the Clerk may accept and rely upon an attorney's affidavit "amending" the debtor's petition to provide certain information missing therefrom, such as a d/b/a missing from the case caption. Clearly, such an affidavit would not meet the formal requirements of an amendment to the petition under Rules 1008, 1009, were there to be a subsequent dispute as to whether the debtor duly disclosed all names by which the debtor was known in the previous six years.

# DO YOU KNOW ABOUT THIS ?

There has been a change in the procedure regarding amendments.

Please see the attached.

CLERK'S OFFICE
UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL J. KAPLAN
CLERK

PLEASE REPLY TO:

☐ 312 U.S. COURTHOUSE
68 COURT STREET
BUFFALO, NY 14202

☐ 212 NEW FEDERAL BLDG.
100 STATE STREET
ROCHESTER, NY 14614

# INFORMATION REGARDING AMENDMENTS

Under Bankruptcy Rule 1009, a voluntary debtor may amend his/her/its petition, schedules, statements, lists, etc. "as a matter of course at any time before the case is closed." Under Rule 1008, such amendments must contain the verified signature of the debtor or the debtor's unsworn declaration under penalty of perjury. (Signatures of both debtors are required in a joint case.)

Prior to the adoption of the General Order of the Court dated 3/21/88 , it was the practice of this Court to require a motion or ex parte motion to amend. This was to accord with prior versions of the applicable Rules, under which in all instances the Judge was to determine who should receive notice of the amendment. However, inasmuch as the phrase "as a matter of course" has appeared in all versions of the Rule since 1973, it was the view of the Court that under normal circumstances, no motion to amend could be denied. Rather, the motion or ex parte motion format was thought to be a convenient format for bringing an amendment to the Judge's attention in a uniform, controlled manner.

Orders entered on such motions have never constituted a declaration of the Court regarding the effect of the amendment on parties or the sufficiency of the amendment in altering the rights of parties adverse to the debtor. For example, the fact that the Court granted an order adding a creditor after the deadline for the filing of objections to discharge was merely a recognition of the language of the Rule, and in no way impaired the fact that under 11 USC § 523(a)(3) many such late-added debts are not dischargeable in the bankruptcy case.

Over time, information reached the Court that (1) this District was one of very few Districts, if not the only District, entering orders on amendments, (2) that the motion format was unduly cumbersome and expensive as to the vast majority of amendments, which are amendments that do not adversely affect any party, and (3) that as to amendments that do adversely affect other parties, the entry of orders thereon grossly misled the adverse parties by implying that the Court had considered the merits of the amendment and had resolved any potentially-implicated questions of law in the debtor's favor.

The cumulative effect of these considerations led the Court to adopt the General Order of 3/21/88 , abolishing the entry of orders on amendments in the absence of genuine disputes regarding their sufficiency or effect.

Pursuant to that Order, I have prescribed the attached form of "Amendment Cover Sheet." This must be completed fully and attached TO THE FRONT of anything that the debtor wishes to have recognized as an "amendment." The significance of this requirement cannot be overstated. It means, for example, that if the debtor must amend schedules to disclose the existence of property not previously scheduled, so that the debtor can avoid later CRIMINAL PROSECUTION for concealment of property, no certification will be available FROM THE CLERK that the debtor filed an amendment disclosing the property unless a fully-completed Amendment Cover Sheet was affixed to the top of the purported amendment, so that my office could recognize it as such. (Whether the Cover Sheet is attached or not, it is ultimately a matter of JUDICIAL interpretation as to whether what was filed was legally sufficient in light of, for example, the verified signature requirement of Rule 1008.)

The next important point of information is that the General Order APPLIES EVEN TO A SPECIAL CATEGORY OF MATTERS THAT ARE NOT TRULY "AMENDMENTS." This situation is the one in which the debtor has filed one or more, but not all, of the required schedules, lists, or statements, and later files the previously-missing ones disclosing thereon the existence of parties not disclosed in the earlier documents. In the performance of its duties under law, the Clerk's office is required to maintain a current listing of all parties-in-interest disclosed by the debtor or self-announced by the party. Previously, this has required that a member of the Clerk's staff examine every line of every amendment and every line of every schedule, statement, list, etc. that is filed subsequent to the filing of the original "Complete List of Creditors" or Matrix, comparing names of parties with the original in order to locate parties being added. Such additions have been a very common occurrance. In reality, the situation is more accurately viewed as one in which the debtor SHOULD BE FILING AN AMENDMENT TO THE ORIGINAL, BUT IS NOT DOING SO, thereby placing an immense burden on the Clerk's office, at taxpayers' expense, to make certain that persons entitled to notice of the proceedings in fact receive it.

Pursuant to the General Order, such situations ALSO REQUIRE THE USE OF THE AMENDMENT COVER SHEET, so that my office may readily observe the fact of the addition of parties, and their identity. If this requirement is not met, the General Order relieves the Clerk of the responsibility to add the new parties to the master mailing list. The consequences of the fact that such parties might not receive notice of various events in the case will fall squarely on the debtor; such consequences might include the exception of pertinent debts from the scope of the discharge, denial of confirmation of a plan, etc.

Finally there is the matter of the "form" of the documents submitted as purported amendments, apart from the matter of the Cover Sheet. As indicated above, Rule 1008 contains a signature requirement; beyond that, Rule 1009 contains a service requirement. That is the total of the guidance provided by the

Rules of Bankruptcy Procedure. The elimination of the motion format provides much greater flexibility and economy in this regard. Debtors may use virtually any written method of communicating the amendment, so long as it is clear. For example, if the debtor is amending the Schedules of Creditors to change the amounts owed, it might well suffice to file (with the Cover Sheet) a photocopy of the original page, with the changes noted in a different color ink, mark it "Amended", and attach the verified signature of the debtor. In other instances, clarity might require some form of narrative statement, such as "The debtor hereby amends the description of the real estate described in Schedule B-1 to read as follows:'....'".

In any event, the elimination of the motion format eliminates the need for the Clerk's office to "police" the form of amendment, while the Cover Sheet requirement assures that the lack of a standard format does not result in my failure to recognize the nature of the document as a purported "amendment." Therefore, the Clerk's office will not look beyond the cover sheet, and will not assess the sufficiency of the amendment, except as to the very few types of amendments that directly affect the ability of the Clerk's office to perform its own work. (An example of the latter would be a amendment to the case caption; it is the responsibility of the Clerk to maintain the court records under the correct case name, and the Clerk will not honor an intended caption amendment which lacks the verified signature of the debtor, or which attempts to add another debtor to the caption, etc.)

While most people will welcome this fact, there is a consequent drawback: parties will no longer have the assurance that filing and processing of an intended "amendment" by the Clerk constitutes an administrative finding of regularity and sufficiency to serve the intended purpose. Attorneys who file purported "amendments" signed only by themselves, and not by their clients, will generally not be informed that the effort to amend is ineffective under the Rules. A party aggrieved by the effort, and better enlightened as to the Rules, will be free to challenge it in any suitable manner.

Indeed it is one principal purpose of the General Order that the time of the Court and its staff no longer be spent engaging in judicial or administrative findings as to amendments that do not affect the work of the court, and as to which no party has expressed any adverse interest.

As has always been the case, it remains the responsibility of the debtor to serve the amendment on affected parties under Rule 1009, and also on the United States Trustee and any trustee who is serving in the case. It also remains true that copies of amendments must be filed in the same number as was required of the original documents.